

109TH CONGRESS
1ST SESSION

H. R. 1043

To provide additional authority to the Office of Ombudsman of the
Environmental Protection Agency.

IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 2005

Mr. BILIRAKIS (for himself and Ms. DEGETTE) introduced the following bill;
which was referred to the Committee on Energy and Commerce

A BILL

To provide additional authority to the Office of Ombudsman
of the Environmental Protection Agency.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ombudsman Reauthor-
5 ization Act of 2005”.

6 **SEC. 2. OFFICE OF OMBUDSMAN.**

7 The Solid Waste Disposal Act (42 U.S.C. 6901 et
8 seq.) is amended by striking section 2008 (42 U.S.C.
9 6917) and inserting the following:

1 **“SEC. 2008. OFFICE OF OMBUDSMAN.**

2 “(a) DEFINITIONS.—In this section:

3 “(1) ADMINISTRATOR.—The term ‘Adminis-
4 trator’ means the Administrator of the Environ-
5 mental Protection Agency.

6 “(2) AGENCY.—The term ‘Agency’ means the
7 Environmental Protection Agency.

8 “(3) DEPUTY OMBUDSMAN.—The term ‘Deputy
9 Ombudsman’ means any individual appointed by the
10 Ombudsman under subsection (e)(1)(A)(i).

11 “(4) OFFICE.—The term ‘Office’ means the Of-
12 fice of the Ombudsman established by subsection
13 (b)(1).

14 “(5) OMBUDSMAN.—The term ‘Ombudsman’
15 means the director of the Office.

16 “(b) ESTABLISHMENT.—

17 “(1) IN GENERAL.—There is established within
18 the Agency an office to be known as the ‘Office of
19 the Ombudsman’.

20 “(2) OVERSIGHT.—

21 “(A) IN GENERAL.—The Office shall be an
22 independent office within the Agency.

23 “(B) STRUCTURE.—To the maximum ex-
24 tent practicable, the structure of the Office
25 shall conform to relevant professional guide-
26 lines, standards, and practices.

1 “(3) HEAD OF OFFICE.—

2 “(A) OMBUDSMAN.—The Office shall be
3 directed by an Ombudsman, who shall be ap-
4 pointed by and report directly to the Adminis-
5 trator.

6 “(B) APPLICABILITY OF CERTAIN CIVIL
7 SERVICE LAWS.—The Ombudsman shall be ap-
8 pointed subject to the provisions of title 5,
9 United States Code, governing appointments in
10 the competitive service, and shall be paid at the
11 rate of basic pay for GS–15 of the General
12 Schedule.

13 “(C) QUALIFICATIONS FOR AND RESTRIC-
14 TIONS ON EMPLOYMENT.—A person appointed
15 as Ombudsman—

16 “(i) shall be a person of recognized
17 judgment, objectivity, and integrity who is
18 well-equipped to analyze problems of law,
19 administration, and public policy;

20 “(ii) shall not have been an employee
21 of the Agency at any time during the 1-
22 year period before the date of appointment;

23 “(iii) shall not have received any
24 grant, loan, or contract (other than an em-
25 ployment contract permissible under clause

(ii)) from the Agency during the 5-year period before the date of appointment; and

“(iv) while serving as Ombudsman, shall not—

“(I) be actively involved in political party activities or publicly endorse, solicit funds for, or make contributions to political parties or candidates for elective office;

“(II) be a candidate for or hold any other elective or appointive public office; or

“(III) engage in any other occupation, business, or profession likely to detract from the full-time performance of his or her duties as Ombudsman or to result in a conflict of interest or an appearance of impropriety or partiality.

“(D) TERM.—The Ombudsman—

“(i) shall serve for a term of 5 years; and

“(ii) may be reappointed for not more than 1 additional term.

“(E) REMOVAL.—

1 “(i) IN GENERAL.—The Administrator
2 may remove or suspend the Ombudsman
3 from office only for neglect of duty or mal-
4 feasance in office.

5 “(ii) COMMUNICATION TO CON-
6 GRESS.—If the Administrator removes or
7 suspends the Ombudsman, the Adminis-
8 trator shall communicate the reasons for
9 the removal or suspension to Congress.

10 “(c) DUTIES.—The Ombudsman shall—

11 “(1) receive, and render assistance concerning,
12 any complaint, grievance, or request for information
13 submitted by any person relating to any program or
14 requirement of the Agency; and

15 “(2) conduct investigations, make findings of
16 fact, and make nonbinding recommendations to the
17 Administrator concerning the program or require-
18 ment of the Agency.

19 “(d) POWERS AND RESPONSIBILITIES.—In carrying
20 out this section, the Ombudsman—

21 “(1) may investigate any action of the Agency
22 without regard to the finality of the action;

23 “(2) may select appropriate matters for action
24 by the Office;

25 “(3) may—

1 “(A) prescribe the methods by which com-
2 plaints shall be made to, and received and ad-
3 dressed by, the Office;

4 “(B) determine the scope and manner of
5 investigations made by the Office; and

6 “(C) determine the form, frequency, and
7 distribution of conclusions and recommenda-
8 tions of the Office;

9 “(4) may request the Administrator to provide
10 the Ombudsman notification, within a specified pe-
11 riod of time, of any action taken on a recommenda-
12 tion of the Ombudsman;

13 “(5) may request, and shall be granted by any
14 Federal agency or department, assistance and infor-
15 mation that the Ombudsman determines to be nec-
16 essary to carry out this section;

17 “(6) may examine any record of, and enter and
18 inspect any property under the administrative juris-
19 diction of—

20 “(A) the Agency; or

21 “(B) any other Federal agency or depart-
22 ment involved in a matter under the adminis-
23 trative jurisdiction of the Agency;

24 “(7) may—

1 “(A) issue a subpoena to compel any per-
2 son to appear to give sworn testimony con-
3 cerning, or to produce documentary or other
4 evidence determined by the Ombudsman to be
5 reasonable in scope and relevant to, an inves-
6 tigation by the Office; and

7 “(B) seek enforcement of a subpoena
8 issued under subparagraph (A) in a court of
9 competent jurisdiction;

10 “(8) may carry out and participate in, and co-
11 operate with any person or agency involved in, any
12 conference, inquiry on the record, public hearing on
13 the record, meeting, or study that, as determined by
14 the Ombudsman—

15 “(A) is material to an investigation con-
16 ducted by the Ombudsman; or

17 “(B) may lead to an improvement in the
18 performance of the functions of the Agency;

19 “(9) may administer oaths and hold hearings in
20 connection with any matter under investigation by
21 the Office;

22 “(10) may engage in alternative dispute resolu-
23 tion, mediation, or any other informal process that
24 the Ombudsman determines to be appropriate to
25 carry out this section;

1 “(11) may communicate with any person, in-
2 cluding Members of Congress, the press, and any
3 person that submits a complaint, grievance, or re-
4 quest for information under subsection (c)(1); and

5 “(12) shall administer a budget for the Office.

6 “(e) ADMINISTRATION.—

7 “(1) IN GENERAL.—The Ombudsman shall—

8 “(A)(i) appoint a Deputy Ombudsman for
9 each region of the Agency; and

10 “(ii) hire such other assistants and em-
11 ployees as the Ombudsman determines to be
12 necessary to carry out this section; and

13 “(B) supervise, evaluate, and carry out
14 personnel actions (including hiring and dis-
15 missal) with respect to any employee of the Of-
16 fice.

17 “(2) DELEGATION OF AUTHORITY.—The Om-
18 budsman may delegate to other employees of the Of-
19 fice any responsibility of the Ombudsman under this
20 section except—

21 “(A) the power to delegate responsibility;

22 “(B) the power to issue subpoenas; and

23 “(C) the responsibility to make rec-
24 ommendations to the Administrator.

1 “(3) CONTACT INFORMATION.—The Ombuds-
2 man shall maintain, in each region of the Agency, a
3 telephone number, facsimile number, electronic mail
4 address, and post office address for the Ombudsman
5 that are different from the numbers and addresses
6 of the regional office of the Agency located in that
7 region.

8 “(4) REPORTS.—The Ombudsman—

9 “(A) shall, at least annually, publish in the
10 Federal Register and submit to the Adminis-
11 trator, the President, the Committee on Energy
12 and Commerce of the House of Representatives,
13 and the Committee on Environment and Public
14 Works of the Senate a report on the status of
15 health and environmental concerns addressed in
16 complaints and cases brought before the Om-
17 budsman in the period of time covered by the
18 report;

19 “(B) may issue reports, conclusions, or
20 recommendations concerning any other matter
21 under investigation by the Office;

22 “(C) shall solicit comments from the Agen-
23 cy concerning any matter under investigation by
24 the Office; and

1 “(D) shall include any comments received
2 by the Office in written reports, conclusions,
3 and recommendations issued by the Office
4 under this section.

5 “(f) PENALTIES.—An investigation conducted by the
6 Ombudsman under this section constitutes—

7 “(1) a matter under section 1001 of title 18,
8 United States Code; and

9 “(2) a proceeding under section 1505 of title
10 18, United States Code.

11 “(g) EMPLOYEE PROTECTION.—

12 “(1) IN GENERAL.—No employer may discharge
13 any employee, or otherwise discriminate against any
14 employee with respect to compensation, terms, con-
15 ditions, or privileges of employment of the employee,
16 because the employee (or any person acting at the
17 request of the employee) complied with any provision
18 of this section.

19 “(2) COMPLAINT.—Any employee that, in the
20 opinion of the employee, is discharged or otherwise
21 discriminated against by any person in violation of
22 paragraph (1) may, not later than 180 days after
23 the date on which the violation occurs, file a com-
24 plaint in accordance with section 211 of the Energy
25 Reorganization Act of 1974.

1 “(h) APPLICABILITY.—

2 “(1) IN GENERAL.—This section—

3 “(A) does not limit any remedy or right of
4 appeal; and

5 “(B) may be carried out notwithstanding
6 any provision of law to the contrary that pro-
7 vides that an agency action is final, not review-
8 able, or not subject to appeal.

9 “(2) EFFECT ON PROCEDURES FOR GRIEV-
10 ANCES, APPEALS, OR ADMINISTRATIVE MATTERS.—

11 The establishment of the Office does not affect any
12 procedure concerning grievances, appeals, or admin-
13 istrative matters under this Act or any other law
14 (including regulations).

15 “(i) SEPARATE LINE ITEM.—In submitting the an-
16 nual budget for the Federal Government to Congress, the
17 President shall include a separate line item for the funding
18 for the Office.”.

○